

CASE MANAGEMENT RECORD

ORIGINAL	
UPDATED	4

CASE NUMBER:	DAR: 85-200	CAAC:	FAR: 85-64
TITLE: Company-Furnished Automobiles			
REFERENCE: Cost Principles Committee report of 5 Mar 86			
ORIGINATION DATE:			
SYNOPSIS: The coverage published for public comment in the Fed. Reg. 12/19/85 should be adopted without change as a final rule.			
PRIORITY:	ORIGINATOR CODE:		
KEYWORDS			
CASE REFERENCES			
FAR CITES			
DFARS CITES			
CASE MANAGER:	N	SUBCOUNCIL ASSIGNMENT:	
COGNIZANT COMMITTEES			
RECOMMENDED ACTION: Docket 3/12/86			
BOX RECORD	1)	2)	3)
	4)	5)	6)
7a)	7b)	7c)	8a)
	8b)	8c)	9) 3/5/86
10)	11)	12)	13a)
	13b)		
DISCUSSION DATE:		DOCKET DATE:	
REPORT DATE:			
FAC	NUMBER:	DATE:	ITEM:
DAC	NUMBER:	DATE:	ITEM:
DEPARTMENTAL	NUMBER:	DATE:	
BULLETIN	NUMBER:	DATE:	
CASE CLOSED:		CASE COMPLETED:	
REG FLEX APPLICABLE: YES		PAPERWORK REDUCTION: N/A	
PROPOSED RULE:	INTERIM RULE:	FINAL RULE: YES	



DEPARTMENT OF THE NAVY

OFFICE OF THE ASSISTANT SECRETARY
(SHIPBUILDING AND LOGISTICS)
WASHINGTON, D. C. 20360

5 March 1986

DAR Staff
Case 85-200

MEMORANDUM FOR THE DIRECTOR, DAR COUNCIL

SUBJECT: DAR Case 85-200; FAR Case 85-64; Company-Furnished Automobiles

I. PROBLEM:

To review public comments which have been received by the DAR Council relative to the subject case and recommend changes necessary to clarify the cost principles applicable to contractor costs of company-furnished automobiles, as required by Title IX of the DoD Authorization Act of 1986, P.L. 99-145.

II. RECOMMENDATIONS:

A. That FAR 31.205-6, Compensation for personal services, be revised as shown in TAB A.

B. That FAR 31.205-46, Travel costs, be revised as shown in TAB B.

C. That the proposed memorandum shown at TAB C, together with the attached Federal Register notice and FAC Preamble, be used to transmit the proposed revisions to the Civilian Agency Acquisition Council for approval and publication as a final rule.

III. DISCUSSION:

A. Background.

In a 22 November 1985 memorandum to the DAR Council, the Cost Principles Committee proposed revisions to the FAR that would specifically make unallowable that portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work). The coverage was developed to comply with the requirements of Title IX of the DoD Authorization Act of 1986, P.L. 99-145, which specifies that, as a minimum, the cost principles applicable to contractor costs of company-furnished automobiles shall be clarified. The Act states that amendments are to define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts. After the DAR Council and the Civilian Agency Acquisition Council revised and approved the Committee's proposed coverage, comments were requested by (i) publication of a notice in the Federal Register dated 19 December 1985 (50 FR 51776) and (ii) letters dated 23 December 1985 to addressees on the FAR Secretariat's industry and trade association list of Government agencies.

B. Discussion of Comments.

Thirty-four responses were received, of which 21 either concurred with or had no comment concerning the recommended revisions. Four respondents (Professional Services Council (PSC), ARGO Systems, Litton Industries, and Motorola, Inc.) partially concurred. The nine respondents who non-concurred were Machinery Allied Products Institute (MAPI), CBEMA, Council of Defense and Space Industry Associations (CODSIA), Lockheed Corporation, FMC Corporation, Alan V. Washburn, Control Data Corporation (CDC), American Bar Association (ABA), and Professional Services Management Association (PSMA). An analysis of the comments in matrix format is provided in the appendix to this report. Specific comments are addressed in the following paragraphs:

1. Assuming total compensation is reasonable, MAPI, CODSIA, Lockheed Corporation, Alan V. Washburn, ABA, and PSMA believe the cost of company-furnished automobiles for personal use should be allowable as a normal fringe benefit. It is argued that it is an acceptable industry practice to provide a company-furnished automobile, when needed for the employee's job, and there is no sound reason why the practice should be discouraged. In the view of these respondents, there is no logic in treating one element of fringe benefits differently than the other elements; the costs of all forms of compensation should be governed under existing reasonableness criteria.

While the Committee views company-furnished automobiles for the conduct of company business as an ordinary cost of doing business, we continue to believe it would be inappropriate for the Government to reimburse employees' personal costs at taxpayers' expense. Apparently, there was considerable support in Congress for this position, since the original Senate version of the Department of Defense Authorization Act of 1986 would have required the Secretary of Defense to amend procurement regulations so as to make unallowable (i) that portion of the cost of the use of company-furnished automobiles which is of personal benefit to the user, and (ii) transportation to and from work, except as specifically provided for in regulations or in the contract. Just because a fringe benefit is provided to employees does not necessarily mean the Government has to treat that cost as allowable. It would seem reasonable for contractors to require reimbursement from employees for personal use of company-furnished automobiles; otherwise, the potential for abuse would be too great. We do not think the Government should pay for such personal use of automobiles so long as this is not perceived as a normal and unobjectionable fringe benefit.

Further, the Committee cannot agree with the argument that the cost of personal use of company-furnished automobiles should be allowable and reimbursable to the contractor as an element of personal compensation, as long as total compensation is reasonable in amount. The concept of "reasonableness in total" has proven to be extremely difficult to administer. Boards and courts have frequently taken very liberal views on the subject of reasonableness, often contending that if a contractor actually incurred the costs, the costs must have been reasonable. The Committee does not subscribe to this view and believes that individual restrictions or limitations are necessary to protect the Government's interests.

2. In the view of PSC, ARGO Systems, Litton Industries, and Motorola, Inc., that portion of the cost of company-furnished automobiles reported as taxable compensation to employees should be allowable under the Federal Acquisition Regulation. It was noted that recently published Treasury regulations require the recognition of taxable income by individuals using company provided vehicles for personal purposes.

The Committee does not believe it is arbitrary and discriminatory to deny recovery of costs because the costs are reported as taxable income to employees. There are many examples where costs are treated differently under the cost principles than they are for income tax purposes. For example, while interest expense is unallowable as a reimbursable cost on Government contracts, it is deductible for Federal income tax purposes. The arguments we have presented in the preceding paragraphs for disallowing the costs for personal use of company-furnished automobiles hold true, regardless of whether or not the amounts are reported as taxable income to employees.

3. Eight of the 13 respondents with substantive comments (CBEMA, CODSIA, FMC Corporation, Alan V. Washburn, CDC, ABA, PSMA, and Motorola, Inc.) express concern that the proposed provision will result in increased administrative costs due to additional recordkeeping requirements, and, therefore, will be in conflict with the Regulatory Flexibility Act and the Paperwork Reduction Act. They contend that the costs of collecting and administering information necessary to comply with the proposed revisions will have a significant economic impact on a substantial number of small entities.

In the Committee's view, the proposed revisions are not expected to have a notable economic impact because they merely clarify policy, facilitate negotiations, reduce areas of dispute, and should not create an economic burden on any business entity. Further, the revisions do not impose any additional reporting and recordkeeping requirements on the public beyond those that are presently required by the Internal Revenue Code to identify that portion of costs relating to personal use of company-furnished automobiles. The proposed rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

4. CBEMA and Control Data observed that the proposed coverage applies to DoD and civilian agency contracts, regardless of value, while the DoD Authorization Act applies only to covered contracts (i.e., other than firm-fixed-price DoD contracts for an amount in excess of \$100,000). They submit that it is a most questionable exercise of rule-making authority to apply the changes "across the board" to all Federal departments and agencies.

The Committee agrees that the application of the proposed coverage has been extended beyond that required by the law. But it does not agree that this is an inappropriate use of the agencies' own regulatory authority. For both administrative and theoretical reasons, the Government agencies concerned have consistently tried to maintain uniform contract cost principles regardless of the contracting agency or contract value. Cost principles typically cover indirect costs which are often simultaneously allocated to contracts of several Government agencies. To have different allowability rules for different agencies, or for contracts of different values, would lead

to multiple overhead rates at a single contractor cost center. This would result in extra administrative effort and tend to increase the cost of all contracts. In addition, we discern no logical reason why the various agencies of the Government should have different cost allowability rules. This thought was paramount during the formulation of the uniform Federal Acquisition Regulation concept.

C. The Committee considered but rejected the idea of changing company-furnished automobiles to company-furnished vehicles. The change was considered in view of the reported use of a company-owned aircraft for daily commuting purposes of the chief executive of a Government contractor, where the costs were charged to indirect expenses allocated to Government contracts. Inasmuch as the reported commuting by corporate aircraft is an isolated case, we believe no regulatory action is necessary, particularly in view of the fact that FAR 31.204(c) states that the standards in FAR 31.205 govern the treatment of "similar or related" costs. Under this principle, we believe that the costs of commuting by company-furnished aircraft would clearly be unallowable. Moreover, we are not inclined to use a term other than automobiles, because that is the term used in P.L. 99-145.

D. OSD Task Force Recommendation.

The OSD Task Force endorsed the changes which the Cost Principles Committee was considering, and which were adopted by the two Councils.

E. Committee Conclusions.

The Committee sees nothing in the respondents' comments which would cause it to recommend altering the proposed rule. We believe it is inappropriate for the Government to reimburse contractors from their employees' personal costs.

All members of the Committee concur in the contents of this report.



J. W. ERMERINS
Chairman
Cost Principles Committee

Cost Principles Committee Members

DoD Members

Sherman Dillon, Army
Charles A. Zuckerman, Air Force
Donald W. Reiter, DLA
Charles D. Brown, OASD(C)
Frances Brownell, DCAA

Other Members

Frank T. Van Lierde, GSA
Robert W. Lynch, NASA
William T. Stevenson, DOE

Attachments:

Appendix - Comment Matrix

TAB A - Ppsd Rev. to FAR 31.205-6

TAB B - Ppsd Rev. to FAR 31.205-46

**TAB C - Transmittal Memo to CAAC
w/attachments**

<u>Commentor</u>	<u>No Comment</u>	<u>Concur</u>	<u>Partially Concur</u>	<u>Non- Concur</u>
The Library of Congress				
Procurement & Supply Division		X		
Pennsylvania Avenue Development Corp.		X		
Export-Import Bank of the U.S.		X		
American Defense Preparedness Association		X		
Federal Home Loan Bank Board	X			
National Science Foundation		X		
National Endowment for the Humanities		X		
Professional Services Council (PSC)			X	
ARGO Systems			X	
Machinery & Allied Products Institute (MAPI)				X
CBEMA				X
Council of Defense & Space Industry Associations (CODSIA)				X
U.S. Arms Control & Disarmament Agency	X			
U.S. Information Agency		X		
Inter-American Foundation	X			
Lockheed Corporation				X
Litton Industries			X	
FMC Corporation				X
Alan V. Washburn				X
Panama Canal Commission		X		
U.S. Dept of Housing and Urban Development		X		
Control Data Corporation				X
American Bar Association				X
Professional Services Management Association (PSMA)				X
Dept of Defense				
Office of Inspector General		X		
Armed Forces Communications and Electronics Association	X			
GTE Telecom Incorporated	X			
Department of the Treasury		X		
Nuclear Regulatory Commission		X		
National Labor Relations Board	X			
Motorola, Inc.			X	
U.S.A. Railroad Retirement Board	X			
U.S. Small Business Administration		X		
Federal Deposit Insurance Corporation	X			
TOTALS	<u>8</u>	<u>13</u>	<u>4</u>	<u>9</u>

Substantive Comments	PSC	Argo Sys.	MAPI	CBEMA	CODSIA	Lockheed		Litton Ind.	FMC Corp.	Alan V.		ABA	PSMA	Motorola
						Corp.	Corp.			Washburn	CDC			
A company-furnished auto-mobile for personal use should be allowable as a normal fringe benefit, assuming total compensation is reasonable.			X		X	X				X		X		
A company-furnished auto-mobile for personal use should be allowable to the extent the cost is reported as taxable income to the employee.	X	X						X						X
Disagree with the assumption that the proposed coverage will have little significant economic impact on a substantial number of small entities under the Reg. Flex. Act.				X	X					X		X		X
Disagree with the assumption that the Paperwork Reduction Act does not apply because the proposed revisions do not impose any additional reporting or recordkeeping requirements on the public				X	X			X	X		X	X		X

APPENDIX

Page 3 of 3 pages

<u>Substantive Comments</u>	<u>Argo</u>		<u>Lockheed</u>	<u>Litton</u>	<u>FMC</u>	<u>Alan V.</u>		<u>CDC</u>	<u>ABA</u>	<u>PSMA</u>	<u>Motorola</u>
	<u>PSC</u>	<u>Sys.</u>	<u>Corp.</u>	<u>Ind.</u>	<u>Corp.</u>	<u>Washburn</u>	<u>PSMA</u>				

The proposed coverage should have been restricted to covered DoD contracts, as specified by the law.

X

X

TAB A
DAR Case 85-200
FAR Case 85-64

PROPOSED REVISION TO FAR 31.205-6

31.205-6 Compensation for personal services.

* * * * *

(m) Fringe benefits.

[(1)] Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. ~~The cost of f~~[F]ringe benefits, including[e], but [are] not limited to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans ~~is allowable if~~ reasonable. [Except as provided elsewhere in Subpart 31.2,] ~~T~~[t]he costs of fringe benefits are allowable to the extent that they are [reasonable and are] required by law, employer-employee agreement, or ~~as~~ an established policy of the contractor.

[(2)] That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees (see 31.205-46(f)).]

TAB B
DAR Case 85-200
FAR Case 85-64

PROPOSED REVISION TO FAR 31.205-46

31.205-46 Travel costs.

(a) through (e) - No change.

[(f) Costs of contractor-owned or -leased automobiles, as used in this paragraph, include the costs of lease, operation (including personnel), maintenance, depreciation, insurance, etc. These costs are allowable, if reasonable, to the extent that the automobiles are used for company business. That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is compensation for personal services and is unallowable as stated in 31.205-6(m)(2).]

TAB C
DAR Case 85-200
FAR Case 85-64

PROPOSED TRANSMITTAL MEMO TO THE CAAC

MEMORANDUM FOR CHAIRMAN, CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: DAR Case 85-200; FAR Case 85-64; Company-Furnished Automobiles

The DAR Council has reviewed the public comments and approved the subject case, which includes the Cost Principles Committee report and all supporting documentation. If the CAAC agrees with our position, please forward the case to the FAR Secretariat for publication as a final rule.

OTTO J. GUENTHER, COL, USA
Director
Defense Acquisition
Regulatory Council

Attachments:

1. Ppsd Federal Register Notice
2. Ppsd FAC Preamble

Attachment 1 to TAB C
DAR Case 85-200
FAR Case 85-64

PROPOSED FEDERAL REGISTER NOTICE

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Compensation for personal services;
Travel costs.

AGENCIES: Department of Defense (DoD); General Services Administration (GSA);
and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: Federal Acquisition Circular No. _____ amends the Federal
Acquisition Regulation (FAR) 31.205-6 and 31.205-46 to cover the costs of
contractor-owned or -leased automobiles.

EFFECTIVE DATE:

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat,
telephone (202) 523-4755. Please cite FAR Case 85-64 when referring to this
case.

SUPPLEMENTARY INFORMATION:

A. Background.

The Defense Acquisition Regulatory Council and the Civilian Agency
Acquisition Council have considered the public comments solicited in the
Federal Register of 19 December 1985 (50 FR 51776). The Councils have
concluded that amendments to the FAR are necessary to comply with a provision
contained in Section 911 of the Defense Procurement Improvement Act of 1985
(Title IX of the DoD Authorization Act of 1986, P.L. 99-145). The Act
specifies that, as a minimum, the cost principles applicable to contractor
costs of company-furnished automobiles shall be clarified to define in detail

and in specific terms those costs which are unallowable, in whole or in part, under covered contracts.

FAR 31.205-6 and 31.205-46 are amended to implement the Act. The revisions state that the cost of contractor-owned or -leased automobiles is allowable, if reasonable, to the extent that the automobiles are used for company business. Additional language states that the portion of the cost of company-furnished automobiles that relates to personal use by employees is compensation for personal services and is unallowable. The Councils believe it is inappropriate for the Government to reimburse contractors for their employees' personal costs.

B. Regulatory Flexibility Act.

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because:

1. The cost of company-furnished automobiles for personal use is not believed to represent a significant outlay for small businesses.

2. Contract auditors have already been disallowing this type of cost, especially when the cost has not been reported to the IRS as personal compensation.

3. The administrative burden of identifying the unallowable cost is not expected to increase because Internal Revenue Service rules already require such identification.

C. Paperwork Reduction Act.

The Paperwork Reduction Act (Pub. L. 96-511) does not apply because the revisions do not impose any additional reporting and recordkeeping

requirements on the public beyond those that are presently required by the Internal Revenue Service.

PART 31. Contract Cost Principles and Procedures

Subsection 31.205-6 is amended by by revising paragraph (m) to read as follows:

31.205-6 Compensation for personal services.

* * * * *

(m) Fringe benefits.

(1) Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. Fringe benefits include, but are not limited to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans. Except as provided elsewhere in Subpart 31.2, the costs of fringe benefits are allowable to the extent that they are reasonable and are required by law, employer-employee agreement, or an established policy of the contractor.

(2) That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees (see 31.205-46(f)).

Subsection 31.205-46 is amended by adding paragraph (f) to read as follows:

31.205-46 Travel costs.

* * * * *

(f) Costs of contractor-owned or -leased automobiles, as used in this paragraph, include the costs of lease, operation (including personnel),

maintenance, depreciation, insurance, etc. These costs are allowable, if reasonable, to the extent that the automobiles are used for company business. That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is compensation for personal services and is unallowable as stated in 31.205-6(m)(2).

Attachment 2 to TAB C
DAR Case 85-200
FAR Case 85-64

PROPOSED FAC PREAMBLE

ITEM _____ -- COST PRINCIPLES ON COMPENSATION FOR PERSONAL SERVICES AND TRAVEL COSTS

FAR 31.205-6 and 31.205-46 are amended to state that the cost of contractor-owned or -leased automobiles is allowable, if reasonable, to the extent that the automobiles are used for company business. Additional language states that the portion of the cost of company-furnished automobiles that relates to personal use by employees is compensation for personal services and is unallowable. The Government believes it is inappropriate to reimburse contractors for their employees' personal costs.

The amendments are necessary to comply with a provision contained in Section 911 of the Defense Procurement Improvement Act of 1985 (Title IX of the DoD Authorization Act of 1986, P.L. 99-145). The Act specifies that, as a minimum, the cost principles applicable to contractor costs of company-furnished automobiles shall be clarified to define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts.